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That the Federal Courts are practically "foreign" courts as far as the State in which they are situated is concerned seems to have been the opinion of the Supreme Court of the United States in a good many cases commencing with Union Bank *v.* Jolly's Admr., 18 How. 503, and continuing down to Barrow Steamship Co. *v.* Kane, 170 U. S. 100. And now in the case of Lupton Co. *v.* Automobile Club decided June 10th the Court seems to "clinch the nail." Under Section 15 of the General Corporation Law of New York a foreign stock corporation, other than a moneyed corporation, is prohibited from doing business in the State without having first procured from the Secretary of State a certificate that it has complied with certain prescribed conditions. The Lupton Company—a corporation which had not complied with the law—brought suit in the Circuit Court of the United States to recover from the automobile company damages it claimed to have sustained for a breach of contract. Its failure to comply with the State law was pleaded by the automobile company in bar and the Circuit Court dismissed the action on the ground that the contract was void. The Supreme Court of the United States held this to be error and quoted decisions from the New York Court of Appeals that the object of this statute was not to avoid contracts but to provide effective supervision and control of business carried on by foreign corporations. The Supreme Court of the United States now holds that no state can prescribe the qualifications of suitors in the courts of the United States and could not deprive of their privilege those who were entitled under the Constitution and laws of the United States to resort to the Federal Courts for the enforcement of a valid contract.

Federal Courts as "Foreign" Tribunals.

It seems to us all these decisions absolutely change the law

which has been so long settled that a corporation has no legal existence outside of the State which created it and that every State had a perfect right to impose reasonable conditions upon any foreign corporation attempting to do business within its borders. Certainly every State should have a right, as the New York Court has said, "to provide effective supervision and control of business carried on by foreign corporations," within its borders. But the whole trend of decisions of the Supreme Court of the United States has been to destroy this right. "To bring an action in this State," the Court construes, means in a *State Court* and the Federal Courts are therefore not "in the State."

Where Interstate Commerce does not aid the foreign corporation this ruling does, and the States had as well surrender all their rights to attempt to supervise and control foreign corporations doing business in their borders. A foreign corporation is superior to any State and above State laws according to these decisions, and can do business at will wherever it chooses, uninterrupted by any attempt at regulation.

This condition of affairs needs legislation, but where will the legislators be found?

Pure Food Laws.

And yet the Supreme Court holds in another case—Standard Stock Food Co. *v.* Food & Dairy Commissioner of Iowa—decided June 10th, that the State law requiring that each package of certain described articles should have affixed thereto in a conspicuous place on the outside a tag giving certain information was a valid inspection law, although it required the payment of the sum of $100 in case of "condimental patented, etc., stock or poultry food" in lieu of a tonnage inspection charge. And this applied to foreign corporations as well as domestic.

Interstate Commerce and the Fourteenth Amendment were, as usual, to the fore, but the Police Power checkmated both of them and the Court held that the stock company was not by this regulation deprived of any right protected by the Federal Constitution or injured by any alleged unconstitutional features of the law. Surely if the Police Power allowed regulation in the one

case, it ought to be allowed in all, so as to supervise and control the business done by a foreign corporation in its borders in the same way it can control corporations created by its own act.

Blue Laws, Billiards and Judicial Notice.

One cannot play billiards or pool in the city of South Pasadena, California, unless in his private house or in a hotel keeping a register and having twenty-five rooms and upwards and of which one is a guest. So a regulation of that city provides, and so the Supreme Court of the United States solemnly holds in Murphy *v.* The People.

The Court decides that the keeping of a billiard hall has a harmful tendency and that it will take judicial notice of this fact. We infer this from its statement in the opinion that this fact is incapable of being controverted. That the regulation is one the city clearly had a right to pass can hardly be questioned, we imagine, especially in view of the decision of the Supreme Court in Booth *v.* Illinois, 184 U. S. 425.

> "A calling may not in itself be immoral, and yet the tendency of what is generally or ordinarily or often done in pursuing that calling may be towards that which is admittedly immoral or pernicious. If looking at all the circumstances that attend, or which may ordinarily attend the pursuit of a particular calling, the State thinks that certain admitted evils cannot be successfully reached unless that calling be actually prohibited, the courts cannot interfere, unless, looking through mere forms and at the substance of the matter, they can say that the statute enacted professedly to protect the public morals has no real or substantial relation to that object, but is a clear, unmistakable infringement of rights secured by the fundamental law."

And the courts of Missouri, Kansas, Mississippi, Nebraska and Oklahoma have under this principle prohibited the keeping of billiard halls and the courts have sustained them. It seems rather queer, however, to quote Lord Hale (who believed in witches and thought they ought to be punished) in a case decided in 1672 (2 Keble 846) on the demoralizing tendency of *bowling alleys.*

But we do not complain of the law. Men must be made good

by statute. But we must beg leave to say that we think the doctrine of judicial notice is—to say the least—"stretched" a little by holding that it is a fact requiring no proof and incapable of being controverted, that the keeping of a billiard hall has harmful tendency. How did the Court get this information judicially?

The Peddler's License Interstate Commerce.

We have received numerous requests from members of the profession through the State, asking us to report the decision of the Supreme Court of the United States in the case of Roselle *v.* Commonwealth of Virginia, which was decided in favor of the State on September 16th, 1909, by the Supreme Court of Appeals of Virginia, 110 Va. 235, and which was taken up to the Supreme Court of the United States by the plaintiff in error, Roselle, and the decision of the Virginia Supreme Court of Appeals affirmed. We have not published the opinion of the Supreme Court of the United States for the same reason which was given for the non-existence of the celebrated Mrs. Harris, "There ain't no sich pussonage"—in other words, the Supreme Court of the United States, whilst affirming the decision of our Supreme Court, did it by an evenly divided court, eight judges sitting, and there was no opinion handed down.

Our readers will remember that this was a question which arose in the city of Charlottesville upon a question whether the Chicago Portrait Company, who sent out agents to take orders for portraits and picture frames to be subsequently delivered, were doing an *interstate* or *intrastate* business. Our Supreme Court decided that the entire negotiation and sale of the picture frames having been shown to be begun and concluded in Charlottesville, Virginia, where the frame then was, made the transaction not a subject of interstate commerce and therefore the agent peddling these portraits and frames was liable for a license tax. It would be well for those contemplating the assessment of a license tax and the prosecution of those doing business of this nature without license, to read carefully the Roselle case. It was the peculiar facts of this case which induced the Supreme Court of Appeals of Virginia to render its decision.

112 Virginia.

Volume 112 of the Virginia Reports of the decisions of our Supreme Court of Appeals has been published. One hundred and twenty-seven cases are reported. Of these fifty-two are affirmed and sixty-eight reversed; two appeals are dismissed and one writ of prohibition denied. There are only four appeals in criminal cases—one of which is affirmed, two reversed and petition for a writ of habeas corpus refused in one. Seven cases went up in which questions of instruction were involved, five of which were personal injury cases. Three were affirmed, four reversed, and in the personal injury cases two were affirmed and three reversed for error in instructions.

A singular fact is that not a dissenting opinion appears in the volume. In two cases only was there any dissent—two judges dissenting in one case and one judge in another; in the latter Judge Harrison taking a different view of the facts in the case from the majority. The opinions are short and to the point, no unnecessary discussion of law being indulged in. When the opinions are lengthy there appears always a good reason for it. Questions of novelty and interest appear in many of the cases reported, but as all of them have been reported at length or digested in the REGISTER we deem it unnecessary to make any particular comment.

We are glad to notice a decided improvement in the paper used in the volume and its general "get up" is excellent in every way.

The attention of the profession is again called to the Rule of Court published in this volume which requests citations of the Virginia Reports by number and not by the name of the Reporter. The numerical list is given, 1st and 2nd Washington being volumes 1 and 2; 33rd Grattan, the last of the named reporters, volume 74. There are six Calls—numbered 5 to 10 inclusive—in the new system, 4 Henning & Munford, 11 to 14 inclusive; 6 Munford, 15 to 20 inclusive; 1 Gilmer, number 21; 6 Randolph, numbered 22 to 27 inclusive, 12 Leigh, 28 to 39 inclusive; 1 and 2 Robinson, or 40 and 41 Virginia, and the 33 Grattan are 42 to 74 inclusive.

The Supreme Court of the United States in the case of Nor-

folk & Suburban Turnpike Company *v.* Commonwealth of Virginia, decided June 10th, 1912, seems to think that there is great ambiguity in the form in which the Supreme Court of Appeals denies a writ of error. The doubt of the Supreme Court of the United States seems very hard to understand in view of the very plain language used by the Virginia Court. The case arose upon an appeal of the Turnpike Company from a decision of the Circuit Court of Princess Anne County in an order suspending the taking of tolls on the turnpike owned by the company until they were put in good repair. Our Supreme Court declined to grant a writ of error and entered the order in the usual form, to-wit:

Is It Ambiguous?

> "In the Supreme Court of Appeals, held at the Library Building in the City of Richmond on Thursday, the 11th day of January, 1912.
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> "The petition of the Norfolk & Suburban Turnpike Company, a corporation, for a writ of error and supersedeas to a judgment or order entered by the Circuit Court of Princess Anne County, on the 12th day of December, 1911, in certain proceedings pending in said Court, whereby the collection of tolls by the said petitioner on certain sections of a turnpike located in said County was suspended, having been maturely considered and the transcript of the record of the judgment or order aforesaid seen and inspected, the Court being of opinion that the said judgment or order is plainly right, doth reject said petition."

A writ of error to the Supreme Court of the United States was then allowed by the President of our Court, in which it was recited that the Supreme Court of Appeals of Virginia had "refused a writ of error, thereby affirming said judgment of said Circuit Court of Princess Anne, Virginia."

The Attorney-General of Virginia moved to dismiss on the ground that the Commonwealth of Virginia had nowhere in the proceedings been made a party and was not a proper party in the case—the proceedings against the Turnpike Company having been initiated by the Circuit Court of Princess Anne by the Judge thereof *ex mero motu*. The Supreme Court of the United States very properly held this motion to be without meritorious grounds, as the proceeding was in reality begun and prosecuted

on behalf of the Commonwealth, citing Pearson *v.* Yewdall, 95 U. S. 294.

The Supreme Court, however, declined to dismiss the writ upon its own motion, but expressed doubt as to its jurisdiction, basing that doubt upon the form in which the Virginia Court denied the writ of error and holding that the order was ambiguous because it did not affirmatively appear whether the Court was merely declining to take jurisdiction of the case, or in effect was asserting jurisdiction and disposing of the case upon the merits by "giving the sanction of an affirmance of the judgment of the trial court."

It is exceedingly difficult for us to see how even the shadow of a doubt could have arisen on this question. Our Supreme Court of Appeals distinctly says in its order that the "transcript of the record of the judgment or order" had been "seen and inspected" and the petition in the case "maturely considered" and the "Court being of opinion that the said judgment or order *is plainly right,* doth reject said petition." How any ambiguity could arise in the mind of the United States Court with such an order before it, is impossible for us to see, and even that Court in its opinion finally says: "There is little or no room for doubt that when the form of expression used by the Court below is read in the light of previous rulings it becomes quite clear that the Court deemed it was exercising jurisdiction over the cause and virtually affirming the judgment." We should emphatically think so without any "previous rulings."

But the Supreme Court of the United States does not propose to allow further ambiguity even in their own minds, and says:

> "While, therefore, in this case, for the reasons stated, we entertain jurisdiction and do not of our own motion dismiss the writ, for the purpose of avoiding the complexity and doubt which must continue to recur and for the guidance of suitors in the future we now state that from and after the opening of the next term of this Court where a writ of error is prosecuted to an alleged judgment or a decree of a court of last resort of a State declining to allow a writ of error to or an appeal from a lower State court, unless it plainly appears on the face of the record, by an affirmance in express terms of the judgment or decree sought to be re-

> viewed, that the refusal of the Court to allow an appeal or writ of error was the exercise by it of jurisdiction to review the case upon the merits, we shall consider ourselves constrained to apply the rule announced in the Crovo case, and shall therefore, by not departing from the face of the record, solve against jurisdiction the ambiguity created by the form in which the State Court has expressed its action."

It will be well for counsel to take notice of this ruling and for our own Supreme Court to remove any question of doubt hereafter in such cases and draw the order denying a writ of error in such shape as to meet the rule in the Crovo case.

The Crovo case alluded to by the Court was also a Virginia case—Western Union Telegraph Company *v.* Crovo, 220 U. S. 364. Here the plaintiff in error sued out two writs of error—one to the Law and Equity Court of the city of Richmond, the trial court, and another to the Supreme Court of Appeals of Virginia, the United States Supreme Court holding that the latter court having denied a writ of error, the judgment of the Law and Equity Court was the highest court of the State to which the case could be carried and a writ will therefore lie to that court if the Federal question is properly saved.

It is fair to the Supreme Court of the United States to say that the varying form in which State Courts express their action in refusing to entertain an appeal from or allow a writ of error to a lower court gives rise to much confusion and it is to be earnestly desired that those engaged in the attempt to have uniformity in the laws of the different states should turn their attention to uniformity in such orders. There is no earthly reason why they should not be alike and indicate the exact position of the court.